IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8376 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAUSHIK J GANDHI

Versus

SANDESH LTD & ANR

Appearance:

1. Special Civil Application No. 8376 of 1994

Mr. DC Raval for MR MR ANAND for Petitioner No. 1

Mr. Kunal Nanavati for MR KS NANAVATI for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 03/03/2004

ORAL JUDGEMENT

Heard learned advocate Mr. Raval for Mr. Anand

for the petitioner and Mr. Kunal Nanavati for the respondents. In this petition, the petitioner has challenged the award made by the labour court, Ahmedabad in Reference No. 479 of 1990 (Old No.Ref.LCA NO. 75/82, Ref.No 318/84 dated 23.7.1992 wherein the labour court has rejected the said reference.

Industrial dispute has been referred to for adjudication on 11th January, 1982; the workman filed his statement of claim as referred to in para 2 of the award. According to the statement of claim of the workman at Exh. 4, as appearing from the award, the services of the workman were terminated by the Managing Director Shri Chimanbhai Somabhai Patel on 11th June, 1981 and, therefore, he immediately served notice upon the respondent on 12th June, 1981. The respondent gave show cause notice on 12th June, 1981 alongwith preliminary suspension order which was received by the workman on 16th June, 1981 and, therefore, the grievance of the workman was to the effect that first, the respondent terminated his services and then subsequently issued show cause notice and order of suspension. The dispute was raised by the workman under section 2(a) of the ID Act against the oral order of termination dated 11th June, 1981. The reply was submitted by the respondent at Exh. 8 wherein it was pointed out by the respondent that the petitioner workman was working in Dispatch Department and he committed misconduct on 11th June, 1981 and, therefore, on 12th June, 1981, show cause notice and the suspension order was issued by the respondent which was received by the petitioner workman and it was replied by the workman on 15th June, 1981. On 12th June, 1981, one letter was written to the petitioner by the respondent. Reply dated 18.6.1981 given by the petitioner was not found satisfactory.Therefore, the respondent decided to initiate departmental inquiry against the petitioner and, thereafter,departmental inquiry was initiated against the petitioner wherein the petitioner remained absent and the petitioner informed the Inquiry Officer that he is not willing to participate in the inquiry and left the place of inquiry. The matter was thereafter adjourned to 30th July, 1981 but on that day, the petitioner failed to remain present and in his absence, the departmental inquiry was conducted. Thereafter, copy of the statement of the witness Shri Dave which was recorded in absence of the petitioner was send to the petitioner workman for giving an opportunity to make cross examination of the said witness Shri Dave as well as to produce any evidence in support of his case. Said letter was received by the petitioner but on 11th August, 1981, he had not remained present and, therefore, the inquiry officer decided the

matter in absence of the petitioner and submitted his findings on 15th September, 1981 and, thereafter, the respondent served show cause notice with findings to the petitioner to which no reply was given by the petitioner and thereafter, the respondent passed the order of dismissal on 6th October, 1981. Therefore, according to the respondent, the petitioner was dismissed from service by the respondents after holding proper and legal departmental inquiry and also after giving reasonable opportunity of hearing to the petitioner. Before the labour court, it was contended by the petitioner that the departmental authority which was initiated by the respondent against him was not legal and proper and, therefore, the labour court examined the said question and vide Exh. 59, the labour court decided that the departmental inquiry initiated against the petitioner was not legal and valid and it was against the principles of natural justice and an opportunity was given to the employer to prove the misconduct against the workman before the labour court by producing evidence. The workman was examined before the labour court. However, in response to such opportunity given by the labour court to the employer, the employer had not produced any documentary and/or oral evidence to prove such misconduct before the labour court.

Thereafter, the labour court framed the issue as to whether the date of oral termination 11th June, 1981 is the correct date of termination and is proved by the petitioner or not and whether the petitioner is entitled for the relief as prayed for in the statement of claim or not. This issue was examined by the labour court on the basis of the evidence before it and it came to the conclusion that the services of the petitioner were not terminated on 11.6.1981 as alleged by the petitioner but he was removed from service by order dated 6th October, 1981. The order which was challenged by the petitioner before the labour court by filing complaint under section 2(a) of the I.D. Act, 1947 was the oral order of termination dated 11th June, 1981 and in fact, there was no any order of termination of his service in writing produced by the petitioner dated 11.6.1981. Therefore, considering the fact that if the service of the petitioner is in fact terminated by oral order dated 11th June, 1981, then, there was no reason for issuing the show cause notice and the suspension order on 12th June, 1981 and then to initiate departmental inquiry against the petitioner. The labour court dismissed the said reference only on the ground that the order of dismissal dated 6th October, 1981 was not challenged by the petitioner before the labour court considering the terms

of reference but the petitioner was challenging the alleged oral order of termination dated 11.6.1981.

Learned advocate Mr. Raval appearing for Mr. Anand for the petitioner submits that now, after a period of 20 years, the petitioner has to raise the dispute against the dismissal order dated 6th October, 1981. He further submits that the representative was not properly assisted and advised by the union representative at the relevant point of time when the reply was submitted by the respondent employer. Difficulty of the petitioner workman can be understood and appreciated. The harassment can also be appreciated. However, the law on this aspect is very much clear that the labour court cannot go beyond the terms of reference. Admittedly, considering the terms of reference, the workman has raised industrial dispute only against the alleged oral order of termination dated 11th June, 1981 and he was not challenging the written order of dismissal dated 6th October, 1981. These facts emerging from the record are admitted facts. Therefore, once the reference is made against the oral order of termination dated 11th June, 1981, then, naturally the labour cannot travel beyond the terms of the said reference. Therefore, the labour court has no jurisdiction to decide the legality, validity and propriety of the order of dismissal dated 6th October, 1981. Considering the terms of reference, the labour court is having jurisdiction only to examine the legality, validity and propriety of the oral order of termination dated 11th June, 1981. The labour court, therefore, rejected the reference on such a technical ground.

Learned advocate Mr. Kunal Nanavati appearing for the respondent has submitted that the labour court was right in rejecting the reference considering the terms of reference. He also submits that still it is open for the petitioner to raise an industrial dispute against the order of dismissal dated 6th October, 1981 but when the reference was made, at that time, oral order of termination dated 11.6.1981 alone was under challenge and, therefore, according to him, the findings given by the labour court and the conclusions drawn by the labour court for rejecting the reference after considering the terms of reference are correct and it would not require any interference of this court in exercise of the powers under Article 227 of the Constitution of India.

I have considered the submissions made by the learned advocates for the respective parties. I have also perused the award made by the labour court. The

view taken by the labour court is technical but legal and, therefore, this court cannot interfere with such award of the labour court. It is a settled principle of law that once a reference is made and the dispute is raised by the workman or the union, the subject matter which is referred to for adjudication is the terms of such reference and the labour court is having no jurisdiction or power to travel beyond such subject matter namely terms of reference. Looking to the facts of the present case, the petitioner workman had challenged the oral order of termination dated 11th June, 1981 However, thereafter, the respondent issued notice to the petitioner on 12th June, 1981 and the petitioner immediately approached the Government Labour Officer by filing complaint under section 2(a) of the ID Act, 1947 and he challenged only alleged oral order of termination dated 11th June, 1981 and he has not waited for the departmental inquiry which was conducted against him by the respondent and therefore, the reference was made only against the oral order of termination dated 11th June, 1981 and not against the order of dismissal in writing dated 6th October, 1981. Therefore, the labour court is not having jurisdiction to examine the legality, validity and propriety of the order of dismissal dated 6th October, 1981. This being really a hardship and legal harassment to the petitioner, as at the relevant time, the petitioner was not properly assisted and advised by the union representative, this court is of the view that the workman should not be made to suffer and, therefore, considering this difficulty and more than twenty years have passed, according to my opinion, now if the petitioner is willing to raise the industrial dispute against the order of dismissal dated 6th October, 1981, then, he is at liberty to raise the same under sec. 2(a) of the ID Act, 1947 for challenging the order dated 6th October, 1981 and the Assistant Labour Commissioner is required to be directed to immediately initiate the proceedings after receiving the complaint under section 2(a) from the petitioner without raising any objection about delay and to consider the period consumed from the date of filing of the complaint against the oral order of termination dated 11th June, 1981 till the date of decision of this court, from 1981 to 2004. Therefore, that time must have to e considered by the Assistant Labour Commissioner while considering the question of delay and to condone the delay.

In view of the above discussion, there is no error on the part of the labour court in rejecting the reference on such a ground considering the scope of jurisdiction as per the terms of reference. The labour

court was perfectly right in not examining the legality, validity and propriety of the order of dismissal dated 6th October, 1981. The labour court has not committed any procedural irregularity or jurisdictional error in rejecting the reference considering the terms of reference. Therefore, no interference in exercise of the powers under Article 227 of the Constitution of India is necessary. Therefore, there is no substance in the petition and the petition is required to be dismissed. However, considering the position of the petitioner who was bona fide prosecuting the remedy initially before the labour court after raising of an industrial dispute and then before this court, according to my opinion, since he was not properly advised and assisted by the representative to get the adjudication of the order of dismissal dated 6th October, 1981, some suitable directions are required to be issued while reserving liberty in favour of the petitioner for raising an industrial dispute against the order of dismissal dated 6th October, 1981.

In view of the above discussion, in the result, this petition is dismissed. Rule is discharged. Interim relief, if any, shall stand vacated. There shall be no order as to costs. However, in the peculiar facts and circumstances of the case, it will be open for the petitioner to raise an industrial dispute by filing the complaint under section 2(a) of the I.D. Act, 1947 before the competent authority within one month from the date of receipt of copy of this order. As and such complaint is filed by the petitioner, it is directed to the Assistant Labour Commissioner concerned to consider the same without raising the objection about delay against the order of dismissal dated 6th October, 1981 and to immediately initiate the conciliation proceedings and if the conciliation proceedings fail, then to pass appropriate order under section 10 of the ID Act, 1947 within three months from the date of receipt of such complaint from the petitioner.

(H.K. Rathod,J.)

Vyas